



புதுச்சேரி மாநில அரசிதழ்

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பொருளடக்கம்

SOMMAIRES

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GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G. O. Rt. No. 114/Lab./AIL/T/2017,
Puducherry, dated 10th July 2017)

NOTIFICATION

Whereas, an Award in I.D (L) No. 18/2014, dated 30-5-2017 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Sun Beam Generator Private Limited, Puducherry and Yoga S/o. Rangarajan, Villupuram, has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the notification issued in Labour Department's G.O.Ms.No.20/91/Lab./L, dated 23-5-1991, it is hereby directed by the Secretary to Government (Labour) that the said Award shall be published in the Official Gazette, Puducherry.

E. VALLAVAN,
Commissioner of Labour-cum-
Additional Secretary to Government (Labour).

BEFORE THE INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT AT PUDUCHERRY

Present : Thiru G. THANENDRAN, B.COM, M.L.,
Presiding Officer.

Tuesday, the 30th day of May 2017

I.D. (L) No. 18/2014

Yoga, S/o. Rangarajan,
Mariamman Koil Street,
Pallithennal, Sadiyandikuppam,
Villupuram District,
Tamil Nadu.

.. Petitioner

Versus

The Managing Director,
M/s. Sun Beam Generator
Private Limited,
Puducherry.

.. Respondent

This industrial dispute coming up before me for final hearing on 2-5-2017 in the presence of Tvl. R.T. Shankar, A. Ashok kumar and P. Suresh, Counsel for the petitioner and Thiru R. Ilancheliyan, Advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this Court passed the following:

AWARD

1. This industrial dispute has been referred by the Government as per the G. O. Rt. No.51/AIL/Lab./J/2014, dated 18-3-2014 for adjudicating the following:-

(i) Whether the dispute raised by the petitioner Thiru R. Yoga against the management of M/s. Sun Beam Generators Private Limited, Puducherry over non-employment is justified? If justified, what relief, he is entitled to?

(ii) To compute the relief if any, awarded in terms of money if, it can be so computed?

2. *The averments in the claim statement filed by the petitioner, in brief, are as follows:*

(i) The petitioner joined with the respondent establishment on and from 3-4-2010 and he was working very sincerely with full dedication after one year the respondent management extended his probation period without any valid reason. However the petitioner performed his duties without any blemish but, the respondent deliberately lengthens his permanent status and that the respondent management were paid low wages and statutory benefits were not extended to the employees, most of the workers are placed as temporary workers for a long period without making permanent and the workers are working beyond working hours and also during holidays and hence, the employees were formed one trade union in order to have collective bargaining and to get their statutory benefits, under such circumstances, the respondent management has adopted unfair labour practices against the office bearers as well as members of the trade union to deprive the workmen of their legitimate right created under the labour laws.

(ii) It is further stated that the respondent management insisted and threatened the petitioner to quit from the union and to give apology letter to the management but, the petitioner did not accept the same therefore, on 6-3-2012, the management called the petitioner and stated orally that hereafter, he has no work in the factory and further, the management has sent a letter, dated 9-3-2012 stating that the petitioner accounts are settled and amount payable was credited in his bank account.

(iii) It is further stated that the petitioner sent a request letter on 10-3-2012 to the management to provide the employment but, the respondent management refused the same and that previously

the petitioner was working in Shaney Pary Rhones Company and has got very good experience and with that experience he joined in this company and served more than 2 years without any blemish but, in order to escape from the clutches of law and to wipe out the trade union from respondent concern the respondent management adopted all sort of unfair labour practice like transfer, suspend, termination, *etc.*, and that the petitioner union was raised a dispute for job protection as against the respondent management and the same was pending before the Labour Officer (Conciliation), Puducherry under such circumstances the respondent management has no right or *prima facie* to terminate the employees of the petitioner union including the petitioner and therefore, such act of the respondent management is a contravention of the provisions of section 33 of the Industrial Dispute Act and therefore, as per the provisions under section 33 of the Industrial Dispute Act during the pendency of the proceedings the respondent management has to obtained previous permission from the concern authority but, the respondent management has adamantly violated the same in dismissing the petitioner which is already disputed one.

(iv) It is further stated the petitioner, served continuous employment for the period of 705 days but, without any justice or reasons, the respondent management *sue motto* and blindly terminated the petitioner from service which is absolutely against the labour laws as well as natural justice and therefore, the said alleged impugned order of the respondent management is liable to be set aside and prayed this Court to direct the respondent to provide employment to the petitioner with full back wages, continuity of service and all other attendance benefits.

3. *The brief averments of the reply statement filed by the respondent are as follows :*

(i) The respondent denied all the averments made by the petitioner in the claim petition and stated that the petitioner was appointed as Probationer by an order, dated 3-9-2010 for a period of one year with effect from 1-4-2010 and subsequently, the petitioner happened to be a non-performer and therefore, the same was extended for further period of one year and the petitioner was given due opportunities to improve himself. However, he could not reach the benchmark and therefore, as per the

terms of appointment his services were terminated by an order, dated 6-3-2012 and whatever amount payable to him was credited in his bank account.

(ii) It is further stated that the petitioner was terminated for the non-performance and as a probationer the petitioner can neither challenge his termination nor claim employment as a matter of right and the termination made by the management is a valid termination and therefore, the petitioner is not entitled for any re-employment, back wages or any other benefits and prayed for dismissal of claim petition.

4. In the course of enquiry PW.1 and PW.2 was examined and Ex.P1 to Ex.P11 were marked and on the side of the respondent RW.1 was examined and Ex.R1 to Ex.R5 were marked.

5. *The point for consideration is:*

Whether the petitioner is entitled for the order of reinstatement with back wages, continuity of service and all other attendant benefits or not ?

6. Both sides are heard. The submission of both the parties, the evidence let in by either sides and the exhibits marked on both sides are carefully considered. The learned Counsel appearing for the petitioner argued that the petitioner has not been given full opportunity in the domestic enquiry and the domestic enquiry has not been conducted properly by the following principles of natural justice and in support of his contention, the learned Counsel has relied upon the Judgment reported in CDJ 2002 SC 195, Jaipur, Zila Sahakari Bhoomi Vikas Bank Limited, Vs. Shri Rama Gopal Sharma and Others. On the other hand, the learned Counsel appearing for the respondent management has filed a written argument and he has also relied upon the following judgments:

* Jaya Raina Vs. Gujarat Livelihood Promotion Company Limited, and Anr. (Gujarat HC 2015 LLR 193 and 194),

* Continental Construction Limited, Vs. Workmen of Continental Construction Limited, (Karnataka HC 2013 LLJ 612),

* Hyderabad Industries Limited, Deoghar Vs. State of Jharkand and Anr, (Jharkand HC 2010 LLR 40),

* Municipal Committee, Sirsa Vs. Munshi Ram [SCC (2) 2005 382],

* Suresh Chand Jain Vs. Director-General and Anr.(2015 Delhi HC),

* Paramjit Singh Jain Vs. Dirsctor, Public Instructions and Ors (2011 SCC LLR 116),

* Chaitanya Prakash and Anr. Vs. H. Omkarappa (2010 SCC LLR 225),

7. From the pleadings of both the parties it is clear that following facts are admitted by both sides that petitioner was working at the respondent establishment from 3-4-2010 and the respondent management has instructed the petitioner that he has no work in their factory under Ex.P1 - termination letter, dated 6-3-2012 and sent a letter on 9-3-2012 stating that the petitioner accounts are settled and amount was credited in the bank account and that he was in service for about 2 years.

8. It is the case of the petitioner that the respondent management insisted and threatened him to quit from the union and to give apology letter to the management and the petitioner did not accept the same and that therefore, the respondent has orally instructed that he has no work at the factory and even after his request made to the management on 10-3-2012, he has not been given employment and it is the further case of the petitioner that the act of the respondent is a contravention of the provisions of section 33 of the Industrial Dispute Act. Since, the petitioner union has raised the industrial dispute before the Conciliation Officer and while the same was pending the respondent management has refused to give employment to the petitioner. In order to prove his case, the petitioner has examined himself as PW.1 and he has stated all the above facts in his evidence and in support of the case, the petitioner has also examined Ramachandiran, President of the Union as PW.2 and he has reiterated the evidence of PW.1 and in support of the oral evidence of PW.1 and PW.2 they have marked Ex.P1 to Ex.P11. The Ex.P1 - the termination letter issued by the respondent management to the petitioner which would reveal the fact that the respondent management has given termination letter to the petitioner stating that the petitioner was appointed as a probationer on terms and conditions and after taking all the considerations, his service was terminated from immediate effect and for full and final settlement of ₹14,883 was transferred to his bank account and other documents would reveal the fact that he has made a

job request to the respondent management on 10-3-2012 and has raised industrial dispute on 4-9-2012 before the Conciliation Officer and the conciliation proceedings were taken place and ended in failure for which the failure report, dated 26-11-2013 was submitted by the Labour Officer and the reference is made to this Court and the trade union has been registered in the year 2012 and some of the employees were transferred on various dates.

9. On the other hand, it is contended by the respondent management that the petitioner was working as a probationer for the period of one year and due to his non performance his probation period was extended for further period of one year and the petitioner was given due opportunities to improve himself but, the petitioner could not improve him and that therefore, as per the terms of appointment his services were terminated by an order, dated 6-3-2012 and amount payable to him was credited in his bank account and the petitioner was working only as a probationer and his service has not been confirmed and that therefore, he cannot claim the status of permanent employee and his services were terminated for non performance and as a probationer he cannot challenge the termination and cannot claim employment as a matter of right and that the respondent management has no any ulterior motive as contended by the petitioner in terminating the services of the petitioner

10. To prove its case, the respondent management has examined one Sakthi, Assistant Manager - HR of the respondent management as RW.1 and he has stated in his evidence that the petitioner employee was working only as a probationer and not a permanent workmen and in support of their case the respondent management has exhibited Ex.R1 to Ex.R5. The appointment letter given by the respondent management on 22-6-2009 to the petitioner was exhibited as Ex.R1 which would reveal the fact that the petitioner was appointed as a trainee with terms and conditions that his service can be terminated during the service without assigning any reason. The Ex.R2 - the probationer order would reveal the fact that the petitioner was appointed as a probationer for a period of one year on 3-4-2010 with terms and conditions that his service can be terminated during the service without assigning any reason. The Ex.R3- probationer period extension order would reveal the fact that the probation period was further extended for one year on the same condition that his service can be terminated during the service without assigning any

reason. The Ex.R4 - Probation termination order would reveal the fact that on 6-3-2012 the probation period was not extended and his service was terminated with immediate effect by the company, one month notice period. The Ex.R5 - Final settlement details would reveal the fact that the amount of ₹14,883 was settled.

11. From the evidence and exhibits marked on the side of the respondent, it is clear that the petitioner was working only as a probationer and not a permanent employee and further the evidence of PW.1 in the cross-examination runs as follows:

“ 10-5-2008-ம் தேதி நான் எதிர்மனுதாரர் நிர்வாகத்தில் பணி புரிய சேர்ந்தேன். அதற்கு முன்பு 3 வருடம் பயிற்சியாளராக பணி புரிந்தேன். பயிற்சி காலம் முடிந்தவுடன் எனக்கு பணி உத்தரவு கொடுக்கப்பட்டது. நான் பணிக்கு சேர்ந்தபோது probation period-ல் பணிக்கு சேர்ந்தேன். நான் அதற்குரிய ஆவணங்களை தாக்கல் செய்துள்ளேன். எனக்கு கொடுக்கப்பட்ட probation உத்தரவுகளை படித்து பார்த்தேன். probation period-ல் என்னை எந்தவித காரணமும் இல்லாமல் என்னை terminate செய்யலாம் என்று சொன்னால் சரியல்ல. எனது பணி எதிர்மனுதாரர் நிர்வாகத்திற்கு திருப்தி அளிக்காததால், என்னை probation period-ன் போதே என்னை பணியிலிருந்து நீக்கி விட்டார்கள் என்று சொன்னால் சரியல்ல”.

From the above evidence, it is also clear that the petitioner was appointed as a probationer and he was in service as a probationer at the time of termination from the service and even in the claim petitioner, the petitioner has not claimed himself as a permanent workman and that therefore, it is established by the respondent management that the petitioner was working as a probationer and his service has not been confirmed by the respondent management till his termination on 6-3-2012 and that therefore, the petitioner has no status of permanent workman.

12. The learned Counsel for the respondent relied upon the Judgment reported in Hyderabad Industries Limited, Deoghar Vs. State of Jharkand and Anr. (Jharkand HC 2010 LL.R 40), wherein it has been held that the probationer can be terminated due to unsatisfactory performance of the probationer and service of the probationer can be terminated or dispensed with during or at the end of the probation period without assigning any reason and the probationer cannot acquire any right to hold or continue to hold such a post during the period of probation and that therefore, the probationer service can be terminated at any time or the probation period can be extended and that therefore, respondent has established the fact that the petitioner was working only as a probationer and he has been terminated for

the unsatisfactory performance and he is not entitled for any order of reinstatement and that therefore, the petitioner is not entitled for any order of reinstatement as claimed by him.

13. Furthermore, the petitioner has contended that he has been terminated while the industrial dispute was pending. But, on perusal of records, it is established by the respondent that he is only a probationer and not having the status of permanent workmen and furthermore, the records would also reveal the fact that the petitioner has raised a dispute before the Conciliation Officer only after the termination and that therefore, section 33 of the Act would not attract and hence, the contention of the petitioner that the respondent management has violated the provisions under section 33 of the Act is also not sustainable and hence, the petitioner is not entitled for any relief as claimed by him and therefore, the industrial dispute raised by the petitioner before the Conciliation Officer over his non-employment is not justified and it is held that he is not entitled for any relief of reinstatement and for back wages as claimed by him and hence, the petition is liable to be dismissed.

14. In the result, the petitioner dismissed. No cost.

Dictated to the stenographer transcribed by her, corrected and pronounced by me in the open Court on this the 30th day of May, 2017.

G. THANENDRAN,
Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Puducherry.

List of petitioner's witnesses:

PW.1 17-02-2015 R.Yoga
PW.2 06-11-2015 Ramachandiran

List of petitioner's exhibits:

Ex.P1 06-03-2012 Copy of the termination letter issued by the respondent management to the petitioner.
Ex.P2 10-03-2012 Copy of the job request sent by the petitioner to the respondent management and its acknowledgment card.
Ex.P3 04.09.2012 Copy of the dispute raised by the petitioner before the Labour Officer (Conciliation), Puducherry.

Ex.P4	24.09.2012	Call letter sent by the Conciliation Officer, Puducherry to the petitioner.
Ex.P5	23-11-2012	Copy of the reply letter submitted by the petitioner to the Labour Officer, Puducherry.
Ex.P6	26-11-2013	Failure report submitted by the Labour Officer (Conciliation), Puducherry.
Ex.P7	18-03-2014	Notification issued by the Government of Puducherry.
Ex.P8	26-01-2012	Copy of the minutes of the meeting.
Ex.P9	01-02-2012	Copy of the Trade Union Registration Application submitted before the register of Trade union, Puducherry.
Ex.P10	27-02-2012	Copy of the intimation letter submitted by the petitioner union to the respondent management.
Ex.P11	Various dates	Copy of the transfer order, suspended order, dismissal order issued by the respondent management.

List of respondent's witness:

RW.1 15-02-2016 R.Sakthi

List of respondent's Exhibits:

Ex.R1	22-06-2009	Copy of the training period extension-cum-revision of salary order given by the respondent management.
Ex.R2	03-04-2010	Copy of the probationer order- cum-revision of wages.
Ex.R3	29-04-2011	Copy of the probationer order cum revision of wages.
Ex.R4	06-03-2012	Copy of the probation termination order.
Ex.R5	06-03-2012	Copy of the final settlement details.

G. THANENDRAN,
Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Puducherry.

புதுச்சேரி அரசு

இந்து சமய நிறுவனங்கள் மற்றும் வக்ஃபு துறை

[அரசு ஆணை பல்வகை எண் 18/இசநி/கோ.4/2017/2531.

புதுச்சேரி, நாள் 2017 (வர்பு) சூலை மீ 31 வு)

ஆணை

புதுச்சேரி மாநிலம், பாரதி வீதி, அருள்மிகு ஸ்ரீ உலகமுத்து மாரியம்மன் ஆலயம், அரசு ஆணை பல்வகை எண் 46/இசநி/கோ.4/2012, நாள் 22-3-2012-ன் மூலம் நியமிக்கப்பட்ட திரு. சா. கனகசபை, த/பெ. சாரங்கபாணி (திட்டம் மற்றும் ஆராய்ச்சி துறை இயக்குநர், புதுச்சேரி) அவர்களால் சிறப்பு அதிகாரி என்கிற நிலையில் நிர்வகிக்கப்பட்டு வருகிறது.

2. இச்சிறப்பு அதிகாரி அரசு பணியிலிருந்து ஓய்வு பெற்றுள்ளதால் அவருக்குப் பதிலாக மேற்கூறிய திருக்கோயிலுக்கு, ஓர் அறங்காவலர் வாரியம் அமைத்து நிர்வகிப்பது இன்றியமையாதது என்று அரசால் கருதப்படுகிறது.

3. எனவே, 1972-ஆம் ஆண்டு புதுச்சேரி இந்து சமய நிறுவனங்கள் சட்டம் 4(1)-ஆம் பிரிவின்கீழ் வழங்கப்பட்டுள்ள அதிகாரங்களைச் செலுத்தி, புதுச்சேரி, பாரதி வீதி, அருள்மிகு ஸ்ரீ உலகமுத்து மாரியம்மன் ஆலயத்திற்கு, பின்வரும் ஐந்து நபர்களைக் கொண்ட ஓர் அறங்காவலர் வாரியத்தை அரசு உடனடியாக அமைக்கிறது:-

திருவாளர்கள் :

- | | |
|--|-------------------------|
| (1) ரா. ஆளவந்தார்,
த/பெ. ராதாகிருஷ்ணன்,
எண் 50, லூயி பிரகாசம் வீதி,
புதுச்சேரி. | . . . தலைவர் |
| (2) ப. ராமமூர்த்தி,
த/பெ. பழனிசாமி,
எண் 85, சின்னவாய்க்கால் வீதி,
புதுச்சேரி. | . . . துணைத்
தலைவர். |
| (3) ப. ஜனார்த்தனன்,
த/பெ. பத்மநாபன்,
எண் 334, பாரதி வீதி,
புதுச்சேரி. | . . . பொருளாளர் |
| (4) கு. ஷண்முகசாமி,
த/பெ. குப்புசாமி,
எண் 27, லூயி பிரகாசம் வீதி,
புதுச்சேரி. | . . . செயலாளர் |
| (5) த. தர்மராஜ்,
த/பெ. தனபால்,
எண் 08, 4-வது குறுக்கு வீதி,
கென்னடி நகர், புதுச்சேரி. | . . . உறுப்பினர் |